GAHC010013032017

2026:GAU-AS:8121-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/918/2017

APTAR ALI
S/O HAKIM ALI R/O VILL- NISHUKA P.S. SORBHOG DIST. BARPETA,
ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI -06.

3:THE DEPUTY COMMISSIONER

BARPETA
DIST. BARPETA
ASSAM
PIN - 781301.

4:THE SUPERINTENDENT OF POLICE B

BARPETA DIST. BARPETA
ASSAM
PIN - 781301.

5:THE DISTRICT ELECTORAL REGISTRATION OFFICER

40 SORBHOG LAC
BARPETA
ASSAM

Advocate for the Petitioner : MR.S A AHMED, MS.M GOGOI

Advocate for the Respondent : ASSTT.S.G.I., GA, ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner : Shri SA Ahmed

Advocates for the respondents : Shri J. Payeng, SC- Home Deptt.& NRC,
Ms. RB Bora, GA, Assam;
Shri AI Ali, SC-ECI.
Shri SK Medhi, CGC.

Date on which judgment is reserved : **08.06.2026**

Date of pronouncement of judgment :**10.06.2026**

Whether the pronouncement is of the operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

(S.K. Medhi, J.)

The extra-ordinary jurisdiction of this Court has been sought to be invoked by filing this application under Article 226 of the Constitution of India by putting to challenge the opinion rendered vide impugned order dated 07.12.2016 passed by the learned Foreigners Tribunal No.11th, Sorbhog, Barpeta in F.T. Case No. 170/2016. By the impugned judgment, the petitioner, who was the proceedee before the learned Tribunal, has been declared to be a foreigner post

25.03.1971.

2. The facts of the case may be put in a nutshell as follows:

(i) A reference was made by the Superintendent of Police (B), Barpeta District, against the petitioner giving rise to the aforesaid F.T. Case No. 170/2016.

(ii) As per requirement u/s 9 of the Foreigner's Act, 1946 to prove that the proceedee is not a foreigner, the petitioner had filed the written statement on 08.09.2016 along with certaindocumentsand adduced evidence.

(iii) The learned Tribunal, after considering the facts and circumstances and taking into account of the provisions of Section 9 of the Foreigners' Act, 1946 had come to a finding that the petitioner, as opposite party, had failed to discharge the burden cast upon him and accordingly, the opinion was rendered declaring the petitioner to be a foreign national post 25.03.1971.

3. We have heard Shri SA Ahmed, learned counsel for the petitioner. We have also heard Shri J. Payeng, learned Standing Counsel, Home Department& NRC;Ms. R.B. Bora, learned GA, Assam, Shri A.I. Ali, learned Standing Counsel, Election Commission of India and Shri SK Medhi, learned CGC. We have also carefully examined the records which were requisitioned vide an order dated 23.02.2017.

4. Shri Ahmed, the learned counsel for the petitioner has submitted that the petitioner could prove his case with cogent evidence and in view of the fact that there was no rebuttal evidence, the learned Tribunal should have accepted the said proof and accordingly hold the petitioner to be a citizen of India. In this

regard, he has referred to the evidence adduced by himself as DW1 and elder brother as DW2and also the following documentary evidence:

(i) Ext-A – Certified copy of Voters List of 1970;

(ii) Ext-B– Certified copy of Voters List of 1989;

(iii) Ext-C – Certified copy of Voters List of 1970;

(iv) Ext-D – Identity Card;

(v) Ext- E – NRC entry Certificate issued by the President, District Jamiot Ulema & Hind, Barpeta.

5. The learned counsel for the petitioner has submitted that in the written statement, all material disclosures were made. He has relied upon a Voter List of 1970 containing the names of the parents of the petitioner. The next Voter List relied upon is of the year 1989 containing the names of the parents, elder brother, sister-in-law and the petitioner. He has also relied upon a Certificate dated 03.08.2016 issued by the Gaonburah to establish the linkage with his father. He has also relied upon an NRC Certificate.

6. The learned counsel for the petitioner accordingly submits that in view of the availability of the aforesaid materials, the impugned opinion could not have been rendered against the petitioner and therefore, the same requires interference.

7. *Per contra,* Shri Payeng, the learned Standing Counsel, Home Department has categorically refuted the stand taken on behalf of the petitioner. Hesubmits that a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not. Therefore, the relevant facts are especially within the knowledge of the proceedee and accordingly, the burden of proving citizenship rests absolutely

upon the proceedee, notwithstanding anything contained in the Evidence Act, 1872 and this is mandated under Section 9 of the aforesaid Act, 1946. However, in the instant case, the petitioner utterly failed to discharge the burden. It is also submitted that rebuttal evidence is not mandatory in every case and would be given only if necessary. Hefurther submits that the evidence of a proceedee has to be cogent, relevant, which inspire confidence and acceptable and only thereafter, the question of adducing rebuttal evidence may come in.

8. The learning Standing Counsel has further submitted that the written statement is the basic document which is supposed to lay down the foundation of the case of the proceeding and the written statement in the instant case lacks details and is totally vague. There is no date or year of the births of the petitioner and there is no details of the family members. In this connection, he has relied upon the following observations made by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal vs. Union of India*** reported in***(2005) 5 SCC 665***:

> "*17. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like under Section 6-A(1) (d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a*

person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

9. Shri Payeng, learned Standing Counsel has submitted that apparently, the Voter Lists of 1970 and 1989 have no connection and there is not a single document to prove the linkage of the petitioner with her father. He has submitted that the Gaonburah Certificate was not proved and the NRC Certificate, apart from not being a proof of citizenship was issued by a private organization. The evidence adduced by the petitioner as DW1 and his projected elder brother as DW2 are not at all trustworthy and credible which are also not supported by any documentary evidence.

10. In support of his submission that a certificate has to be proved from contemporaneous records, the learned Standing Counsel has relied upon the judgment passed in the case of ***Romila Khatun vs. Union of India*** reported in ***2018 (4) GLT 373*** and the following observations have been pressed into service.

"***20.*** *It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. …"*

11. He has also drawn the attention of this Court to the case of ***Nur Begum vs. Union of India and Ors.*** reported in ***2020 (3) GLT 347***wherein certain observations regarding exercise of Certiorari jurisdiction have been made which read as follows:

> "*9. On the available materials, we find that the Tribunal rendered opinion/order upon due appreciation of the entire facts, evidence and documents brought on record. We find no infirmity in the findings and opinion recorded by the Tribunal. We would observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal. No case is made out that the impugned opinion/order was rendered without affording opportunity of hearing or in violation of the principles of natural justice and/or that it suffers from illegality on any ground of having been passed by placing reliance on evidence which is legally impermissible in law and/or that the Tribunal refused to admit admissible evidence and/or that the findings finds no support by any evidence at all. In other words, the petitioner has not been able to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion."*

12. He has also relied upon the case of the Hon'ble Supreme Court in ***Rupajan Begum vs. Union of India*** reported in***(2018) 1 SCC 579,*** wherein it has been laid down that a certificate has to be proved on two aspects, firstly, the authenticity of the same and secondly, the authenticity of the contents.

13. The learned Standing Counsel has accordingly submitted that the writ petition be dismissed and the interim order be vacated.

14. The learned counsel for the rest of the respondents have supported the submissions advanced on behalf of the Home Deptt. & NRC and have prayed for dismissal of the writ petition. They have submitted that this Court in exercise of its Certiorari jurisdiction does not act as an Appellate Court and it is only the decision making process which can be the subject matter of scrutiny. It is submitted that there is no procedural impropriety or illegality in the decision making process and therefore, the instant petition is liable to be dismissed. They have further submitted that the procedure adopted for adjudication of a reference by a Foreigners Tribunal is summary in nature and there is also a time frame for completion. It is also submitted that there is a question of national security by the unabated influx of foreign nationals and before any action is taken, the proceedee is given an opportunity whereby he or she is required to prove the citizenship through cogent, credible and acceptable evidence.

15. The rival submissions made have been duly considered and the materials placed before this Court including the records of the Tribunal have been carefully perused.

16. With regard to the aspect of burden of proof as laid down in Section 9 of the Act of 1946, the law is well settled that the burden of proof that a proceedee is an Indian citizen is always on the said proceedee and never shifts. In the said Section, there is *non-obstante* clause that the provisions of the Indian Evidence Act would not be applicable. For ready reference, Section 9 is extracted hereinbelow-

> "9. *Burden of proof*.—If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner

of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person."

17. In this connection, the observations of the Hon'ble Supreme Court in the case of ***Fateh Mohd. Vs. Delhi Administration [AIR 1963 SC 1035]*** which followed the principles laid down by the Constitutional Bench in the case of ***Ghaus Mohammad Vs. Union of India [AIR 1961 SC 1526]*** in the context of Foreigners Act, 1946 would be relevant which is extracted hereinbelow-

"*22. This Act confers wide ranging powers to deal with all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting their or his entry into India or their presence or continued presence including their arrest, detention and confinement. The most important provision is Section 9 which casts the burden of proving that a person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall lie upon such person. Therefore, where an order made under the Foreigners Act is challenged and a question arises whether the person against whom the order has been made is a foreigner or not, the burden of proving that he is not a foreigner is upon such a person. In Union of India v. Ghaus Mohd. the Chief Commissioner of Delhi served an order on Ghaus Mohammad to leave India within three days as he was a Pakistani national. He challenged the order before the High Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order under Section 3(2)(c) of the Foreigners Act, 1946. In appeal the*

Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the respondent."

18. Before embarking to adjudicate the issue involved *vis-a-vis* the submissions and the materials on record, we are reminded that a Writ Court in exercise of jurisdiction under Article 226 of the Constitution of India would confine its powers to examine the decision making process only. Further, the present case pertains to a proceeding of a Tribunal which has given its findings based on the facts. It is trite law that findings of facts are not liable to be interfered with by a Writ Court under its certiorari jurisdiction.

19. Law is well settled in this field. The Hon'ble Supreme Court, after discussing the previous case laws on the jurisdiction of a Writ Court *qua* the writ of certiorari, in the recent decision of ***Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das & Ors [Civil Appeal No. 3339 of 2023]*** has laid down as follows:

"*49. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.*

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or

palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

20. In the instant case, the written statement is absolutely vague and apparently, has not met the requirements,as laid down by the Hon'ble Supreme Court in the case of ***Sarbananda Sonowal*** (supra). There is a requirement to disclose the following:

(i) his date of birth;

(ii) place of birth;

(iii) name of his parents;

(iv) their place of birth and citizenship.

Further, there may be a requirement to give the details of the grandparents. It has been stated that all these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State.

21. So far as the Voters List of 1970 is concerned, the name of the projected father is written as Aakim Ali (aged 38 years) son of Samir Uddin and mother is Aamiron Nessa (aged 27 years)and the village is Uttar Athiyabari. There are two other names in the said Voters List. There is a long, inordinate and inexplicable gap with the next Voters List which is of the year, 1989 in which it is claimed that the name of the petitioner figures with his projected parents and brother. The name of the projected father is however Hakim Ali (aged 70 years) son of Sokhu Mia and mother Aamiron (aged 65 years). The name of the petitioner is stated to be Aator Ali and the village is Nisuka. It clearly appears that the Voters List of 1989 does not contain the names of the persons who have been referred in the Voters List of 1970 as nothing is matching. The reliance upon the anotherVoters List of 1970 containing the name of the projected sister Nurjahan Begum would be of no relevance as there is no connection established between Nurjahan Begum and the petitioner. The EPIC of DW2 – the projected elder brother would not have any probative value in the context of proving one's citizenship. As noted above, the Gaonburah Certificate dated 03.08.2016 was not proved. So far as the NRC Certificate is concerned, law is settled that such Certificate cannot determine citizenship without any other support. In any case, the said Certificate is found to be issued by the President of the District Jamiot

Ulema Hind which is absolutely alien to the legal system. So far as the evidence adduced by the petitioner as DW1 is concerned, he has been marked as 'D' voter since 1997. There is no explanation however with regard to the non-enlisting of his name in any previous Voters List as it appears that he was born in 1970 and therefore, at least from 1990, his name should have been there. This Court has taken judicial notice by the 61st Amendment of the Constitution of India in the year 1989, the minimum age of voting has been reduced from 21 years to 18 years.

22. The evidence of DW2, the projected elder brother would be of no relevance as the same is not supported by any trustworthy and convincing documents. In his cross-examination, DW2 has accepted that he was not aware about the contents of his statements made in the examination-in-chief by way of affidavit.

23. In the case of ***Bijoy Das Vs. UOI*** reported in ***2018 (3) GLT 118,*** this Court has laid down that in proceedings of this nature, oral evidence alone would not be enough and such evidence is required to be supported and corroborated by documentary evidence and contemporaneous records. However, in this case, the same has not been able to be done by the petitioner. We are of the view that the petitioner as proceedee had failed to discharge his burden to prove his citizenship.

24. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned order dated 07.12.2016 passed by the learned Foreigners Tribunal No.11th, Sorbhog, Barpeta in F.T. Case No. 170/2016 does not call for any interference.

25. The writ petition accordingly stands dismissed. Interim order passed earlier stands vacated. The actions consequent upon the opinion rendered by the learned Tribunal would follow in accordance with law.

26. The records be returned to the concerned Foreigners Tribunal forthwith, along with a copy of this order.

JUDGE **JUDGE**

Comparing Assistant